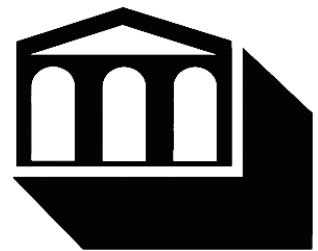


# Michigan Circuit Court Benchbook Volume One

---



By **Hon. J. Richardson Johnson**  
Circuit Judge  
Ninth Judicial Circuit  
Kalamazoo, Michigan

Unless otherwise indicated, this benchbook is current through September 30, 2004.

---

# Acknowledgments

Many people have assisted in the preparation of this benchbook. Administrative Assistant Sue King skillfully helped me review and revise this manuscript. As a Circuit Judge, I have had the privilege of working with a succession of law clerks. Each law clerk has assisted me with the development of this benchbook. Their aid has been invaluable. They are: Douglas Wilcox, Sunny Forton, Jayson Blake, Sarah Stancati, Mark Beougher, Kerri Rapacz and Sharla Comstock.

Beginning in 1997, I provided working drafts of this benchbook at the annual new judges seminar. The experience of revising the work annually and then receiving feedback from new judges has been invaluable. MJI has also provided encouraging feedback after the seminars—the type of stimulus that keeps an author working.

My colleagues on the Circuit Court bench have also helped develop this benchbook. A number of judges have made suggestions that resulted in changes as the benchbook evolved. The Honorable Philip D. Schaefer has made suggestions as he used earlier versions. As I began to work with MJI to complete this edition, Circuit Judges agreed to review portions of the work. They are: Hon. George S. Buth, 17th Circuit Court, Grand Rapids; Hon. William J. Caprathe, 18th Circuit Court, Bay City; Hon. Dennis C. Kolenda, 17th Circuit Court, Grand Rapids; Hon. M. Richard Knoblock, 52nd Circuit Court, Bad Axe; Hon. Richard M. Pajtas, 33rd Circuit Court, Charlevoix.

This book could not have been completed without the assistance of the Michigan Judicial Institute. It has been a pleasure to work with Tobin L. Miller over the past several years. His suggestions and assistance were critical to the completion of this book. It has also been a pleasure to work with Phoenix Hummel and Jennifer D. Warner, who also helped prepare this text for publication.

Most importantly, I thank my wife, Nancy, and my son, Sam. Their patience made this work possible.

---

# Using This Benchbook

This benchbook is intended for Michigan Circuit Court Judges who handle civil and criminal cases. The purpose of this benchbook is to provide a single source to address issues that may arise while the judge is on the bench. The benchbook is designed to be a ready reference, not an academic discussion. In that context, one of the most difficult challenges is organizing the text so that the user can readily find any topic as it arises.

This book has underlying themes. It may assist the user to understand the overarching concepts around which the book is organized. This book is based upon the following concepts:

- The focus is on process rather than substantive law except for a few instances where substantive law is frequently encountered (i.e. contract law in civil cases or issues like search and seizure in criminal cases).
- The text covers the routine issues that a Circuit Judge may face and non-routine issues that require particular care when they arise.
- The text is designed to encourage best practices rather than minimal compliance.
- The text is intended to include the authority the judge needs to have at his or her fingertips to make a decision.
- The text is designed to be read aloud or incorporated in a written decision.
- The text identifies whether the court's decision is discretionary (note the standard of review language provided for most sections).

---

With these concepts in mind, the text is organized as follows:

- The format generally follows the sequence of the Michigan Court Rules and the Michigan Rules of Evidence.
- The format generally follows the typical sequence in which issues arise during the course of a case.
- At the beginning of each chapter is a table of contents that lists what is covered in the chapter.
- Sections in each chapter are identified by the word or phrase typically used to identify the topic (a keyword concept).
- The discussion of each topic is designed to move from the general to the specific without undue elaboration.
- If the court is required to consider particular factors when making a decision, every effort has been made to identify the necessary elements.
- Most sections conclude with the standard of review applied by the appellate courts, which can be used to quickly determine whether the decision is discretionary.
- Every effort has been made to cite the relevant Michigan law using either the seminal case or the best current authority for a body of law. United States Supreme Court decisions are cited when Michigan courts are bound by that authority and they are the original source. There are occasional references to federal decisions or decisions from other states when the author has located no applicable Michigan authority.
- Every effort has been made to cite the source for each statement (if no authority is cited for a proposition, then the statement is the author's opinion).
- If a proceeding or rule of evidence is based upon a statute, reference to that authority is given in the text.
- If a model or standard jury instruction addresses an issue, it is referenced in the text.

**Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the Justices of the Michigan Supreme Court.**

This benchbook replaces the “Benchbook for Michigan Circuit Court Judges” (2002). The text has been revised, reordered and updated.